

United States Court of Appeals For the First Circuit

No. 05-1455

99-344 (PG)

UNITED STATES,

Appellee,

v.

ANGEL M. OLIVO-RIVERA,

Defendant, Appellant.

Lynch, Lipez and Howard,
Circuit Judges.

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U.S. DISTRICT COURT
SAN JUAN, P.R.

JUDGMENT

Entered: February 3, 2006

The parties to this appeal are in agreement that the district court erred in sentencing defendant-appellant to two years imprisonment for his second violation of the terms of his supervised release when he had already been sentenced to eleven months imprisonment for his first violation of the terms of his supervised release. The parties are correct, and the sentence of the district court shall be vacated so that the case may be remanded for re-sentencing.

Under the version of 18 U.S.C. § 3583(e)(3) applicable to the defendant-appellant's sentencing with respect to revocations of supervised release, he could not be subject to more than two years additional imprisonment in the aggregate. See United States v. Tapia-Escalera, 356 F.3d 181, 186-188 (2004) (interpreting statutory language in light of "unusually explicit legislative history"). See also id. at 188 (acknowledging that Congress has since amended the statutory language prospectively to eliminate the aggregate cap in favor of a 'per revocation' cap). The district court's sentence would result in thirty-five months additional imprisonment in the aggregate. Therefore, on remand, the district court cannot impose

a sentence of imprisonment on defendant-appellant longer than thirteen months.

The sentence imposed by the district court is vacated, and the case is remanded for re-sentencing.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

[Certified: Hon. Juan Perez-Gimenez, Frances DeMoran, Clerk]
[cc: Saul Roman-Santiago, Esq., Jose Ruiz Santiago, AUSA, Rose M. Vega, AUSA, Nelson J. Perez-Sosa, AUSA, Marian Bauza, AUSA]

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FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By: J. Calado Date: 2-3-06